

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:

THE KRYSTAL COMPANY, *et al.*,¹

Debtors.

Chapter 11

Case No. 20-61065 (PWB)

(Jointly Administered)

**MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS
FOR ENTRY OF AN ORDER GRANTING THE OFFICIAL COMMITTEE OF
UNSECURED CREDITORS LEAVE, STANDING, AND AUTHORITY TO
COMMENCE, PROSECUTE, AND IF APPROPRIATE, SETTLE
CERTAIN CAUSES OF ACTION ON BEHALF OF THE DEBTORS' ESTATES**

The Official Committee of Unsecured Creditors (the “Committee”) of The Krystal Company *et al.*, the above-captioned debtors and debtors-in-possession (collectively, the “Debtors”), by and through its undersigned counsel, hereby moves this Court for entry of an order (the “Motion”) giving the Committee authority, standing, and leave to commence, prosecute, and if appropriate, settle the Challenges (defined below) of the Debtors and their respective estates against Wells Fargo Bank, National Association, as administrative agent, and various other lenders (collectively, the “Lenders”). For its Motion, the Committee respectfully states as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: The Krystal Company (4140); Krystal Holdings, Inc. (5381); and K-Square Acquisition Co., LLC (8916). The location of the Debtors’ corporate headquarters and service address is: 1455 Lincoln Parkway, Suite 600, Dunwoody, Georgia 30346.

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. § 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested in this Motion are 11 U.S.C. §§ 105(a), 1103(c)(5), 1107(a), and 1109(b).

BACKGROUND

A. General Background.

3. On January 19, 2020 (the “Petition Date”), The Krystal Company and its debtor affiliates (collectively, the “Debtors”) each filed voluntary petitions for relief under Chapter 11 of Title 11, United States Code (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Northern District of Georgia (Atlanta Division) (the “Court”).

4. Since the Petition Date, the Debtors have remained in possession of their properties and have continued to operate their businesses as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

5. On or about February 11, 2020, pursuant to Section 1102 of the Bankruptcy Code, the United States Trustee for the Northern District of Georgia appointed seven (7) creditors to serve on the Committee in connection with these administratively consolidated Chapter 11 cases. The members of the Committee are: NCR Corporation, Charles Tombras Advertising, Inc., The Coca-Cola Company, Realty Income Corporation, Flowers Foods, Inc., the Pension Benefit Guaranty Corporation, and SLM Waste Recycling Services, Inc. *See* Docket No. 143.

6. The Committee selected Kelley Drye & Warren LLP as its lead counsel and Arnall Golden Gregory LLP as its local counsel. The Committee also selected FTI Consulting, Inc. to serve as its financial advisor.

B. The Lenders and the Debtors' Use of Cash Collateral in these Bankruptcy Cases.

7. The Debtors are party to the *Third Amended and Restated Credit Agreement* dated as of April 26, 2018 (the "Credit Agreement") with the Lenders.²

8. As of the Petition Date, the Debtors purportedly owed the Lenders approximately \$50 million, plus interest and fees under the Credit Agreement (the "Secured Obligations").³ The Secured Obligations are purportedly secured by security interest or liens (the "Liens") in all or substantially all of the Debtors' assets.⁴

9. The Debtors initially sought the use of Cash Collateral on a non-consensual basis over the objection of the Lenders.⁵ The Lenders ultimately consented to the use of Cash Collateral on an interim basis and the Debtors' use of Cash Collateral was approved on January 22, 2020, subject to an initial three week budget through February 9, 2020 (the "First Interim Order").⁶ The First Interim Order provided the Lenders with replacement liens and superpriority claims as

² See Debtors' Emergency Motion for Entry of Interim and Final Orders (1) Authorizing the Debtors to Use Cash Collateral; (2) Granting Adequate Protection to Lenders; (3) Modifying the Automatic Stay; (4) Scheduling a Final Hearing; and (5) Granting Related Relief (the "Cash Collateral Motion") at ¶ 7.

³ See Second Interim Order (1) Authorizing the Debtors to Use Cash Collateral, (2) Granting Adequate Protection to Prepetition Secured Parties, (3) Modifying The Automatic Stay, and (4) Providing Notice of Final Hearing ¶ D.2.

⁴ See Declaration of Jonathan M. Tibus in Support of Chapter 11 Petitions and First Day Pleadings (the "First Day Declaration"), ¶ 16.

⁵ See Wells Fargo Bank, National Association's (I) Objection to Debtors' Emergency Motion for Entry of Interim and Final Orders (1) Authorizing the Debtors to Use Cash Collateral; (2) Granting Adequate Protection to Lenders; (3) Modifying the Automatic Stay; (4) Scheduling a Final Hearing; and (5) Granting Related Relief; (II) Limited Objection to Certain First Day Relief; and (III) Request for Adequate Protection. Docket No. 28.

⁶ See Interim Order (1) Authorizing the Debtors to Use Cash Collateral, (2) Granting Adequate Protection to Lenders, (3) Modifying the Automatic Stay, and (4) Providing Notice of Second Interim Hearing. Docket No. 39.

adequate protection for any potential diminution in the value of their collateral.⁷ The First Interim Order also provided that the Postpetition Collateral (as defined in the First Interim Order) excluded Avoidance Actions.

10. The Court held a further hearing on the Cash Collateral Motion on February 5, 2020. The Court again approved the use of Cash Collateral on an interim basis, subject to a four week budget ending the week of March 1, 2020 (the “Second Interim Order”).⁸ The Second Interim Order also provided the Lenders with replacement liens and superpriority claims as adequate protection for any potential diminution in the value of their collateral and confirmed that Postpetition Collateral excluded Avoidance Actions.⁹

11. The Court held a further hearing on the Cash Collateral Motion on March 3, 2020. The Court again approved the use of Cash Collateral on an interim basis, subject to a five week budget ending April 5, 2020 (the “Third Interim Order”).¹⁰

12. The Court held a further hearing on the Cash Collateral Motion on April 1, 2020. The Court again approved the use of Cash Collateral on an interim basis, subject to a two week budget ending April 19, 2020 (the “Fourth Interim Order”).¹¹

13. On April 17, 2020 the Court entered a stipulated order, which approved the use of Cash Collateral on an interim basis, subject to a two week budget ending May 3, 2020

⁷ See First Interim Order, ¶ 6.

⁸ See *Second Interim Order (1) Authorizing the Debtors to Use Cash Collateral, (2) Granting Adequate Protection to Prepetition Secured Parties, (3) Modifying the Automatic Stay, and (4) Providing Notice of Final Hearing*. Docket No. 121.

⁹ See Second Interim Order, ¶ 6.

¹⁰ See *Third Interim Order (1) Authorizing the Debtors to Use Cash Collateral, (2) Granting Adequate Protection to Prepetition Secured Parties, (3) Modifying the Automatic Stay, and (4) Providing Notice of Final Hearing*. Docket No. 218.

¹¹ See *Order Authorizing Continued Use of Collateral, Including Cash Collateral, Under Third Interim Order*. Docket No. 305.

(the “Fifth Interim Order,” and together with the First Interim Order, the Second Interim Order, the Third Interim Order, and the Fourth Interim Order “Interim Orders”).¹²

14. The Third Interim Order provides in pertinent part that “[t]he Debtors shall have waived any right to challenge the amount, scope, validity, enforceability, extent, perfection, priority, or avoidability of any aspect of the Prepetition Indebtedness and Prepetition Liens ***unless the Debtors shall have provided to the Agent (with a copy to counsel for the Committee) no later than April 3, 2020, a written statement specifying in detail each basis for objection to the Prepetition Indebtedness and Prepetition Liens.***” See Third Interim Order, ¶ 8(d) (emphasis added).

15. As to the Committee, the Third Interim Order further provides that “[t]he Committee shall have waived any right to challenge the amount, scope, validity, enforceability, extent, perfection, priority, or avoidability of any aspect of the Prepetition Indebtedness and Prepetition Liens ***unless the Committee shall have filed with the Court a motion for standing no later than April 21, 2020,*** which contains a written statement specifying in detail each basis for objection to the Prepetition Indebtedness and Prepetition Liens. Any such motion for standing shall toll the Committee’s rights with respect to any challenge to the Prepetition Agent’s and Prepetition Lenders’ Prepetition Indebtedness and Prepetition Liens.” See Third Interim Order, ¶ 8(d) (emphasis added).

C. The Debtors’ and the Committee’s Challenges to the Secured Obligations and the Liens.

16. On April 3, 2020, the Debtors sent a timely written statement and accompanying Exhibit 1 and Schedules (the “Statement”) to counsel for the Lenders, which, *inter alia*, specified

¹² See Stipulated Order Authorizing Continued Use of Cash Collateral, including Cash Collateral, Under Third Interim Order. Docket No. 321.

in detail at least ten (10) independent bases on which the Debtors' bankruptcy estates may object to the extent, validity, and priority of the Secured Obligations owed to, and Liens asserted by, the Lenders (the "Debtor Identified Challenges"). A true and correct copy of the Statement is attached to this Motion as **Exhibit A** and expressly incorporated by reference. A chart of the items identified in the Statement is set forth below.

Item	Description of Challenge in Item
1	Funds held by the Debtors that were necessary to pay trust fund taxes, such as sales taxes, are not property of the estate.
2	The Lenders do not have a perfected security interest in commercial tort claims.
3	The Lenders do not have a perfected security interest in certain of the Debtors' real property leases and franchise agreements.
4	The Lenders do not have a perfected security interest in the funds that were in certain of the Debtors' deposit accounts.
5	Any valuation of the Debtors' assets as of the filing date should not attribute any value to the Lenders' pre-petition security interest in general intangibles.
6	The Lenders do not have a security interest in the Debtors' post-petition inventory by virtue of 11 U.S.C. § 552(a), and the appropriate method for determining the value of the Lenders' pre-petition security interest in the Debtors' inventory and equipment is a liquidation valuation method.
7	The Lenders do not have a perfected security interest in certain insurance claims where the Lenders were not identified as loss payees.
8	The Lenders do not have a perfected security interest in the Debtors' intellectual property rights that are not identified on Schedule 2 of the Statement.
9	The Lenders do not have a perfected lien or security interest in the Debtors' real property located on Alabama Highway located in Catoosa County, Georgia.

10	<p>The Lenders do not have a security interest in any property that the Debtors acquired after the Petition Date by virtue of 11 U.S.C. § 552(a) unless such property constitutes proceeds of the Lenders' collateral under 11 U.S.C. § 552(b).</p> <p>To the extent that the Debtors have a security interest in proceeds such interest should be invalidated based on the "equities of these bankruptcy cases."</p>
----	---

17. Notably, the Statement states that "[t]he Debtors believe that it is incumbent upon the Prepetition Secured Parties to file an adversary proceeding in the Chapter 11 case (the "**Case**") to establish the amount, scope, validity, enforceability, extent, perfection, priority, or avoidability of the Prepetition Indebtedness and Prepetition Liens pursuant to 11 U.S.C. § 506(b). In the context of any such adversary proceeding, the issues set forth on Exhibit 1 attached hereto could be raised as a challenge to such asserted claims and interests and would need to be adjudicated by the Court."

18. In addition to the Debtor Identified Challenges, the Committee identifies the following potential challenges to the Secured Obligations and the Liens (the "Committee Identified Challenges"; and together with the Debtor Identified Challenges, the "Challenges");

- a. All Debtor Identified Challenges as supplemented in this Motion; and
- b. The Refunds, as defined below, are not subject to the Liens. More specifically, the Debtors had taxable income in tax years 2013, 2015, 2016, and 2017. The Debtors have net operating losses ("NOLs") for tax years 2018 and 2019¹³ and have not yet applied such NOLs. In the end of March 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act or ("CARES Act"). The CARES Act, *inter alia*, amended the Internal Revenue Code to allow for the carryback of losses arising in taxable

¹³ The Debtors have not yet filed their 2019 tax returns.

years beginning after December 31, 2017, and before January 1, 2021, to each of the five taxable years preceding the applicable taxable year of such loss. The CARES Act also amended the limitation that NOLs could only be used to offset up to 80% of taxable income. Because any refunds that may result from the Debtors' 2018 and 2019 NOLs carried back to tax years 2013, 2015, and 2016 (the "Refunds") did not come into existence until the date that the CARES Act passed into law in March 2020 (at the earliest), the Refunds constitute post-petition property, and are not subject to the Liens by virtue of 11 U.S.C. § 552(a).¹⁴

RELIEF REQUESTED

19. The Committee seeks an order pursuant to Sections 105(a), 1103(c)(5), 1107(a), and 1109(b) of the Bankruptcy Code granting the Committee standing to commence, prosecute and, if appropriate, settle the Challenges.

BASIS FOR RELIEF

20. A debtor-in-possession has the rights and performs the functions and duties of a trustee serving in chapter 11 reorganization, including the right and duty to sue and be sued. *See* 11 U.S.C. §§ 323(b) and 1107(a).

21. As the Court of Appeals for the Third Circuit confirmed in *Official Comm. Of Unsecured Creditors of Cybergenics Corp. v. Chinery*, a bankruptcy court may grant a committee standing to litigate claims on behalf of a debtor's bankruptcy estate pursuant to Sections 105(a), 1103(c)(5) and 1109(b) of the Bankruptcy Code. *See Official Comm. Of Unsecured Creditors of Cybergenics Corp. v. Chinery (In re Cybergenics)*, 330 F.3d 548, 575 (3d Cir. 2003); *see also In re*

¹⁴ The Committee further expressly reserves the right to assert any additional basis for the Refunds not being subject to the Liens.

iCPS, Inc., 297 B.R. 283, 289-90 (Bankr. N.D. Ga. 2003) (granting Committee standing to pursue estate claims where debtor in possession had consented to relief, reasoning in part “[t]he Court is persuaded most by the reasoning employed by the majority of the Third Circuit Court of Appeals in the *Cybergenics* decision.”).

22. Section 1103 of the Bankruptcy Code sets forth the powers and duties of committees and provides that a committee may investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor’s business and the desirability of such business, and any other matter relevant to the case or to the formulation of a plan. *See* 11 U.S.C. § 1103(c)(2). Section 1103 of the Bankruptcy Code further provides a committee may “perform such other services as are in the interest of those represented.” *See* 11 U.S.C. § 1103(c)(5). Similarly, Section 1109 of the Bankruptcy Code provides any party in interest, including a committee, with the right to “appear and be heard on any issue in a case under this chapter.” *See* 11 U.S.C. § 1109(a).

23. Taken together, these Sections of the Bankruptcy Code “evinced a Congressional intent for committees to play a robust and flexible role representing the bankruptcy estate, even in adversarial proceedings.” *Cybergenics*, 330 F.3d at 566. The possibility of a derivative suit “provides a critical safeguard against lax pursuit” of claims by the parties initially charged with pursuing them. *Id.* at 573-74. Congress consciously built a measure of flexibility into the scope of a committee’s services to empower a bankruptcy court to authorize a committee to represent the estate where the usual representative is unable or unwilling to act. *Id.* at 563.

24. To grant derivative standing, a bankruptcy court must determine (i) whether a colorable claim exists; (ii) that the debtor has unjustifiably refused to pursue such claim; and (iii) that the committee has obtained permission to initiate the action on behalf of the

bankruptcy estate. *See La. World Exposition v. Federal Ins. Co.*, 858 F.2d 233, 247 (5th Cir. 1988); *Infinity Inv. Ltd. v. Kingsborough (In re Yes! Entm't. Corp.)*, 316 B.R. 141, 145 (D. Del. 2004) (*citing Valley Media*, 2003 WL 21956410 at * 2)). Subject to Court approval of this Motion, each of these elements has been satisfied.

A. The Challenges are Colorable Claims or Requests for Relief.

25. First, in order for the Court to determine whether derivative standing is appropriate it must determine that the Committee asserts “a colorable claim or claims for relief that on appropriate proof would support a recovery.” *See G-1 Holdings, Inc. v. Those Parties Listed on Exhibit A (In re G-1 Holdings, Inc.)*, 313 B.R. 612, 631 (Bankr. D. N.J. 2004) (*quoting In re STN Enters., Inc.*, 779 F.2d at 905).

26. The Statement identified at least ten Debtor Identified Challenges. The first of these items identifies a colorable claim that the proceeds of the Debtors’ pre-petition accounts receivables that are attributable to sales taxes are *not* property of the Debtors’ bankruptcy estates.

27. The second of these items identifies a colorable claim that the Lenders failed to perfect their security interest in commercial tort claims. The Committee supplements this item by stating that the Credit Agreement does not specifically identify any commercial tort claims, and therefore, the Lenders do not have a perfected security interest or lien in the Debtors’ commercial tort claims.

28. The third of these items identifies a colorable claim that the Lenders failed to perfect their security interest in certain of the Debtors’ leases and franchise agreements. The Committee supplements this item by stating that in order to perfect an interest in a real property lease, a filing must be made in the applicable real property recording office. Further, the Credit Agreement excludes from its definition of collateral any lease or contract if the grant of a security

interest or lien would result in a breach, termination, or default, under the subject lease or contract. Accordingly, any of the Debtors' real property leases that contains anti-encumbrance language falls outside of the definition of collateral in the Credit Agreement, and would not be subject to the Liens. Moreover, the Lenders have not provided the Committee with evidence that they perfected security interests in the Debtors' leasehold interests or fixtures, with the exception of a UCC filing in DeKalb County, Georgia, covering buildings, leases, fixtures or other improvements at real property located at 2068 North Druid Hills Road in Atlanta (the "DeKalb Filing"). Accordingly, the Debtors and the Committee state a colorable claim that, with the exception of the DeKalb Filing, the Lenders do not have a perfected security interest in any of the Debtors' real property leases and related fixtures for which it did not file a leasehold mortgage.

29. The fourth of these items identifies a colorable claim that the Lenders failed to perfect their security interest in certain deposit accounts, and that the funds of those accounts are not property of the estate. The Committee supplements this item by stating that cash held in a deposit account is perfected by control, either (a) by executing a control agreement, or (b) by possession, if a lender is the depository bank. The Committee has identified approximately two dozen store level accounts maintained by the Debtors at banks other than Wells Fargo or Regions Bank for which no control agreements exist. Accordingly, the Debtors and the Committee state a

colorable claim that the Lenders do not have a perfected lien or security interest in any cash held at banks other than Wells Fargo or Regions Bank for which no control agreement exists.

30. The fifth of these items identifies a colorable claim that any valuation of the Debtors' assets should not attribute any value to the Lenders' pre-petition lien in general intangibles.

31. The sixth of these items identifies a colorable claim that the Lenders do not have a security interest or lien in the Debtors' post-petition inventory by virtue of 11 U.S.C. § 552(a), and that the appropriate method for determining the value of the Lenders' pre-petition lien in the Debtors' inventory and equipment is a liquidation valuation method.

32. The eighth of these items identifies a colorable claim that the Lenders do not have a perfected security interest in the Debtors' intellectual property rights that are not identified on Schedule 2 of the Statement.

33. The ninth of these items identifies a colorable claim that the Lenders do not have a perfected security interest in the Debtors' real property located on Alabama Highway located in Catoosa County, Georgia.

34. The tenth of these items identifies a colorable claim that the Lenders do not have a security interest or lien in any property that the Debtors acquired after the Petition Date by virtue of 11 U.S.C. § 552(a) unless such property constitutes proceeds of the Lenders' collateral under 11 U.S.C. § 552(b). This item also identifies a colorable claim that to the extent that any property the Debtors acquired after the Petition Date constitutes proceeds of the Lenders' collateral that any

such security interest or lien in proceeds should be invalidated based on the “equities of these bankruptcy cases.”

35. The Committee Identified Challenges identifies a colorable claim that the Lenders do not have a security interest or lien in the Debtors’ 2018 and 2019 NOLs by virtue of the CARES Act and 11 U.S.C. § 552(a).¹⁵

36. The Challenges all represent colorable claims or requests for relief related to the extent, validity, of priority of the Secured Obligations and the Liens, and the first factor has been satisfied.

B. Given the Deadlines Set Forth in the Interim Orders the Debtors have Effectively Refused to Assert the Challenges.

37. Second, the Court must consider whether the debtor in possession or trustee has refused to bring the subject claims. The Third Interim Order required the Debtors to send the Lenders a written statement specifying in detail each basis for objection to the Secured Obligations and the Liens no later than April 3, 2020, and required the Committee to file this Motion no later than April 21, 2020. On April 3, 2020, the Debtors sent the Statement to the Lenders, which indicates that the Debtors do not believe that they are required to file a motion or adversary proceeding to assert the Debtor Identified Challenges. Further, although the Statement contains a reservation of rights clause, the Debtors failed to expressly identify the Committee Identified Challenges. Accordingly, in the context of the deadlines set forth in the Interim Orders, the Statement is tantamount to the Debtors unjustifiably refusing to pursue the Challenges for purposes of this Motion. Therefore, the second factor has been satisfied.

¹⁵ The Debtors may also assert that the Committee’s challenge to the Lender’s lien in the Refunds is subsumed within the tenth of the Debtor Identified Challenges.

C. The Committee is Seeking Authority to Assert the Challenges.

38. Third, the Court must consider is whether the Committee has obtained prior Court approval to assert the Challenges on behalf of the Debtors' bankruptcy estates. The Committee is seeking such approval through this Motion. The Committee is the proper party to litigate the Challenges whether by motion or adversary proceeding because it is the entity charged with safeguarding the interests of the bankruptcy estates and maximizing value of the estates for all general unsecured creditors. *See In re Enron Corp.*, 279 B.R. 671, 689 (Bankr. S.D.N.Y. 2002) (quoting Collier on Bankruptcy ¶ 1103.05[1][a] at 1103-22 (15th ed. rev. 2002) ("the primary purpose of a committee . . . is to maximize the return to the constituency represented by the committee and all actions undertaken by the committee should be with that goal in mind.")). Section 1103(c) of the Bankruptcy Code sets forth the Committee's duties, including performing such services as are in the interest of the general unsecured creditors.

39. Given the Debtors' position that it is the Lenders' responsibility¹⁶ to initiate a legal action to determine the extent, validity, and priority of their asserted secured claim, and the Committee's April 21 deadline to file this Motion, the Committee's request for standing is both timely and necessary to enable the Committee to fulfill its fiduciary duties. Accordingly, the third factor has been satisfied.

¹⁶ The Committee does not at this time take a position as to whether the Debtors are correct in this assertion or whether the Lenders would be required to file a motion or adversary proceeding to validate the extent, validity or priority of its asserted secured claim.

WHEREFORE, the Committee respectfully requests that this Court enter an order:

(i) granting the Motion, (ii) providing the Committee authority, standing, and leave to commence, prosecute, and if appropriate, settle all of the Challenges against the Lenders, and (iii) granting the Committee such other relief as the Court deems just and appropriate.

Dated: Atlanta, Georgia
April 20, 2020

ARNALL GOLDEN GREGORY LLP

/s/ Darryl S. Laddin

Darryl S. Laddin
Georgia Bar No. 460793
Sean C. Kulka
Georgia Bar No. 648919
171 17th Street NW, Suite 2100
Atlanta, GA 30363
Telephone: (404) 873-8500
darryl.laddin@agg.com
sean.kulka@agg.com

*Counsel to the Official Committee of
Unsecured Creditors of The Krystal Company*

EXHIBIT A
STATEMENT

LAW OFFICES

SCROGGINS & WILLIAMSON, P.C.

4401 NORTHSIDE PARKWAY

SUITE 450

ATLANTA, GEORGIA 30327

(404) 893-3880 • TELEPHONE

(404) 893-3886 • FACSIMILE

WWW.SWLAWFIRM.COM

FRANK W. SCROGGINS (1933-2010)

J. ROBERT WILLIAMSON
ASHLEY REYNOLDS RAY
J. HAYDEN KEPNER, JR.
MATTHEW W. LEVIN

April 3, 2020

By E-Mail and First Class Mail

Jennifer Feldsher, Esq.
Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178-0060
jennifer.feldsher@morganlewis.com

Rufus T. Dorsey
Parker, Hudson, Rainer & Dobbs LLP
303 Peachtree Street, N.E.
Suite 3600
Atlanta, GA 30308
rdorsey@phrd.com

**RE: In re: The Krystal Company, et al., Chapter 11, Case No. 19-59440
United States Bankruptcy Court Northern District of Georgia, Atlanta Div.**

Dear Jennifer and Rufus:

As you know, this firm represents The Krystal Company, Krystal Holdings, Inc., and K-Square Acquisition Co., LLC (collectively, the “**Debtors**”) in the above-referenced case. Paragraph 8(d) of the *Third Interim Order (1) Authorizing the Debtors to Use Cash Collateral, (2) Granting Adequate Protection to Lenders, (3) Modifying the Automatic Stay, and (4) Providing Notice of Final Hearing* [Dkt. No. 218] (the “**Third Interim Order**”)¹, provides in part as follows:

The Debtors shall have waived any right to challenge the amount, scope, validity, enforceability, extent, perfection, priority, or avoidability of any aspect of the Prepetition Indebtedness and Prepetition Liens unless the Debtors shall have provided to the Agent (with a copy to counsel for the Committee) no later than April

¹ Capitalized terms used herein but not defined shall have the meaning ascribed to such term in the Third Interim Order.

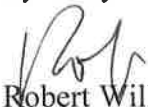
Jennifer Feldsher, Esq.
Rufus Dorsey, Esq.
April 3, 2020
Page 2

3, 2020, a written statement specifying in detail each basis for objection to the Prepetition Indebtedness and Prepetition Liens.

This letter shall constitute the Debtors' written statement referenced therein. The Debtors believe that it is incumbent upon the Prepetition Secured Parties to file an adversary proceeding in the Chapter 11 case (the "**Case**") to establish the amount, scope, validity, enforceability, extent, perfection, priority, or avoidability of the Prepetition Indebtedness and Prepetition Liens pursuant to 11 U.S.C. § 506. In the context of any such adversary proceeding, the issues set forth on Exhibit 1 attached hereto could be raised as a challenge to such asserted claims and interests and would need to be adjudicated by the Court.

Should you have any questions regarding the foregoing, please do not hesitate to contact me.

Very Truly Yours,


J. Robert Williamson
Counsel for the Debtors

Encl.

Cc: Darryl Laddin, Esq. (via email - darryl.laddin@agg.com)
Sean Kulka, Esq. (via email - sean.kulka@agg.com)
Eric Wilson, Esq. (via email - ewilson@kellydrye.com)

Schedule of Potential Issues with Prepetition Indebtedness and/or Prepetition Liens

Collateral Type	Basis for Deficiency
1. Accounts Receivable	The proceeds of pre-petition accounts receivable included sales tax collections which were not property of the estate and/or were impressed with a trust in favor of the applicable taxing authorities. To that extent the funds would not be cash collateral of the Prepetition Secured Parties.
2. Commercial Tort Claims	It does not appear that any commercial tort claims were specifically identified in the applicable loan documents, or subsequently; therefore, the Prepetition Secured Parties do not have a properly perfected security interest in any commercial tort claims.
3. Contract Rights/Leases	<p>Leases: It appears that the Prepetition Secured Parties only have a handful of agreements with various lessors that would allow the Prepetition Secured Parties to enter into the premises and take possession of personalty, but there are no leasehold mortgages or other agreements which would allow the Prepetition Secured Parties to assume the Debtor's interest in the leases. Therefore, under applicable law the Prepetition Secured Parties would not have a perfected security interest in the Debtors' real estate leases.</p> <p>Franchise Agreements: The Franchise Agreements contain provisions limiting the ability to assign these. Likewise, applicable law may restrict the franchisor's ability to assign the agreement without notice to and/or consent of the franchisee. <i>See, e.g.,</i> Tennessee Code Annotated 47-9-408. Therefore, the Prepetition Secured Parties may not have a perfected security interest in some or all of the franchise agreements.</p>
4. Deposit Accounts	All funds in deposit accounts for which there were not Deposit Account Control Agreements (" DACAs ") in place or for which DACAs were executed within 90 days of the Petition Date, including but not limited to the accounts identified on Schedule 1 attached hereto, (a) are not subject to a properly perfected security interest if commingled with sales tax collections and/or other cash not constituting collateral proceeds (see §10 below), and/or (b) the security interests could be avoided for DACAs executed within 90 days prior to the Petition Date. Funds in the Debtors

EXHIBIT 1

	<p>accounts as of the Petition Date equal to the total amount of the Debtors' accrued liability for sales taxes (or other trust fund taxes) should be excluded from the Prepetition Secured Parties' collateral -- such funds would not constitute property of the Debtors or their estates under applicable law, and thus would not be considered "cash collateral" of the Prepetition Secured Parties. <i>See, e.g., O.C.G.A. 48-8-1 et seq.</i> (retailer is dealer required to collect sales taxes for state); <i>See also, Begier v. Internal Revenue Serv.</i>, 496 U.S. 53, 57-60 (1990) (trust fund taxes are not the debtor's property); <i>In Re Integrated Health Servs., Inc.</i>, 344 B.R. 262, 270 (Bankr. D. Del. 2006) (constructive trust may be imposed on collected taxes where there exists a reasonable nexus between the funds and the taxes in question); <i>In re Shank</i>, 792 F.2d 829, 830-32 (9th Cir. 1986) (sales tax required by state law to be collected by sellers from their customers is "trust fund" tax); <i>DeChiaro v. N.Y. State Tax Comm'n</i>, 760 F.2d 432, 433-34 (2d Cir. 1985) (same). In the event that the Prepetition Secured Parties assert a right of set-off under 11 U.S.C. §553 and/or applicable law, the Debtors reserve the right to oppose such assertion based on equitable considerations. <i>See In re Photo Mechanical Servs.</i>, 179 B.R. 604 (Bankr. D. Minn. 1995)</p>
5. General Intangibles	<p>In valuing the Debtors' assets for purposes of establishing the amount of the Prepetition Secured Parties allowed secured claim, there should be no value attributed to goodwill to the extent that the Debtors were insolvent as of the Petition Date.</p>
6. Goods (inventory, equipment)	<p>Inventory: This will have to be valued as of the Petition Date to determine the Prepetition Secured Parties' interest in cash collateral and allowed secured claim. Debtors assert that liquidation value would be the appropriate measure for that purpose. Moreover, the Prepetition Secured Parties' pre-petition security interest in inventory would not extend to post-petition inventory (or other goods acquired post-petition) under 11 U.S.C. § 552.</p> <p>Equipment: This will have to be valued as of the Petition Date to determine the Prepetition Secured Parties' allowed secured claim. Debtors assert that liquidation value would be the appropriate measure.</p>

EXHIBIT 1

7. Insurance Claims	The Prepetition Secured Parties may not have a nonavoidable perfected security interest in insurance claims under policies where the Prepetition Secured Parties are not listed as loss payees on the policies.
8. Intellectual Property	The Prepetition Secured Parties would only have security interests in the trademarks, copyrights and/or patents reflected on Schedule 2 attached hereto.
9. Real Estate	The Debtors scheduled an ownership interest in the following real property: .62 Acre Parcel of Land, # 0039B-041-00A, Alabama Highway, Catoosa County GA. There does not appear to be a valid Security Deed of record for this property; therefore, it is unencumbered.
10. Valuation of Assets/Determination of Extent of Security Interests	The Prepetition Secured Parties do not have a properly perfected, nonavoidable security interest in all of the Debtors' assets, as discussed above. Moreover, any assets acquired by the Debtors post-petition would not be subject to the pre-petition security interests held by the Prepetition Secured Parties unless and only to the extent that the Prepetition Secured Parties can show that post-petition assets constitute proceeds of pre-petition collateral in accordance with 11 U.S.C. § 552(b). <i>See In re Strix Chex Columbus Two LLC</i> , 542 B.R. 914 (Bankr. N.D.Ga. 2015) (Drake, B.J.) (holding that only a portion of post-petition revenues generated from debtor restaurant's food sales should be considered proceeds of the food inventory). And even then, the Debtors reserve the right to request that the Court decline to allow the pre-petition security interests to attach to post-petition proceeds under the "equities of the case" exception set forth in Section 552(b). For purposes of credit bidding and/or disposition of proceeds of a sale of all or substantially all of the Debtors' assets, the Court will need to determine the relative value of assets in which the Prepetition Secured Parties do have a properly perfected security interest versus all other assets. The Debtors reserve all rights with respect to such issues.
11. Reservation of Rights	The Debtors reserve the right to amend or supplement this statement.

x	Bank Name	Bank Account Number	DACA Account?	Sun, Jan 19
1	Krystal Funding Account	4122366495	Yes*	\$ 1,461,032
2	Credit Card Account	4122366503	Yes*	-
3	Franchise Depository	4122366511	No	1,007,882
4	Krystal Trademark	4122366529	No	14,295
5	Pension Savings	4122381957	No	59,295
6	THE KRYSTAL COMPANY	4122586282	Yes*	-
7	Restaurant Depository	4122815822	Yes*	-
8	THE KRYSTAL COMPANY	4124926304	Yes*	-
9	THE KRYSTAL COMPANY	4124926312	Yes*	461,892
10	THE KRYSTAL COMPANY	4414104919	Yes*	-
11	Krystal	4871907218	No	-
12	Accounts Payable	9600168928	No	-
13	Payroll	9600168932	No	-
14	THE KRYSTAL COMPANY	9632000429	No	-
15	Utilities Account	4870423274	No	-
16	AMERIS BANK - ALB005	2048770248	Yes	7,291
17	AMERIS BANK - TIF001	2048565812	Yes	9,634
18	BB&T BANK - AUB003	125427820	Yes	9,233
19	BB&T BANK - BGK002	5180626516	Yes	7,528
20	BB&T BANK - CHN029	5297306911	Yes	608
21	BB&T BANK - MAC003	5247352084	Yes	8,486
22	BB&T BANK - MAC004	5247352092	Yes	9,228
23	BB&T BANK - MAC007	5247352130	Yes	13,001
24	BB&T BANK - MAC012	5245235412	Yes	7,873
25	BB&T BANK - SAV008	5243983047	Yes	7,146
26	BB&T BANK MAC008	5245235366	Yes	9,465
27	CITIZENS BANK (PEOPLES BANK - KIM001)	5325624237	Yes	11,251
28	FIRST FEDERAL BANK	22160523	Yes	5,126
29	FIRST FEDERAL BANK JAX029	22160531	Yes	6,154
30	FIRST TENNESSEE CONCENTRATION	9761654	No	119,403
31	NATIONAL BANK OF TENNESSEE-NTN001	23709	Yes	12,898
32	PLANTERS FIRST - WRG003	50172759	Yes	6,890
33	REGIONS CONCENTRATION ACCOUNT	7887001185	No	251,263
34	SUNTRUST BANK - LWG001	1.00015E+12	Yes	7,420
35	TENNESSEE STATE BANK-KNX010	401069566	Yes	4,934
36	THE BANK OF DADE - CHN019	25452	Yes	8,420
37	HANCOCK BANK	720230713	Yes	45,215
38	META Bank	5.53001E+18	No	5,669
39	HARBOR COMMUNITY BANK	1023950	Yes	450
40	Wells Fargo Restaurant Depository Account	4945760999	No	-
41	Wells Fargo Restaurant Depository Account	4945768042	No	-
42	Wells Fargo Restaurant Depository Account	4945761005	No	-
43	Wells Fargo Restaurant Depository Account	4945761013	No	-
44	Wells Fargo Restaurant Depository Account	4945761039	No	-
45	Wells Fargo Restaurant Depository Account	4945761047	No	-
46	Wells Fargo Restaurant Depository Account	4945761054	No	-
47	Wells Fargo Restaurant Depository Account	4943035287	No	-
48	Wells Fargo Restaurant Depository Account	4945761062	No	-
49	Wells Fargo Restaurant Depository Account	4945761070	No	-
50	Wells Fargo Restaurant Depository Account	4945761088	No	-
51	Wells Fargo Restaurant Depository Account	4945761096	No	-
52	Wells Fargo Restaurant Depository Account	4945761112	No	-
53	Wells Fargo Restaurant Depository Account	4945761138	No	-
54	Wells Fargo Restaurant Depository Account	4945761146	No	-
55	Wells Fargo Restaurant Depository Account	4945761153	No	-

56	Wells Fargo Restaurant Depository Account	4945761161	No	-
57	Wells Fargo Restaurant Depository Account	4942124124	No	-
58	Wells Fargo Restaurant Depository Account	4945761179	No	-
59	Wells Fargo Restaurant Depository Account	4945761187	No	-
60	Wells Fargo Restaurant Depository Account	4945761195	No	-
61	Wells Fargo Restaurant Depository Account	4945761203	No	-
62	Wells Fargo Restaurant Depository Account	4945761229	No	-
63	Wells Fargo Restaurant Depository Account	4945761237	No	-
64	Wells Fargo Restaurant Depository Account	4945761252	No	-
65	Wells Fargo Restaurant Depository Account	4945761260	No	-
66	Wells Fargo Restaurant Depository Account	4945761278	No	-
67	Wells Fargo Restaurant Depository Account	4943035295	No	-
68	Wells Fargo Restaurant Depository Account	4945761286	No	-
69	Wells Fargo Restaurant Depository Account	4945761294	No	-
70	Wells Fargo Restaurant Depository Account	4945761302	No	-
71	Wells Fargo Restaurant Depository Account	4940085186	No	-
72	Wells Fargo Restaurant Depository Account	4940451313	No	-
73	Wells Fargo Restaurant Depository Account	4945761328	No	-
74	Wells Fargo Restaurant Depository Account	4945761336	No	-
75	Wells Fargo Restaurant Depository Account	4942975566	No	-
76	Wells Fargo Restaurant Depository Account	4945761344	No	-
77	Wells Fargo Restaurant Depository Account	4943035303	No	-
78	Wells Fargo Restaurant Depository Account	4941104648	No	-
79	Wells Fargo Restaurant Depository Account	4945761351	No	-
80	Wells Fargo Restaurant Depository Account	4945761377	No	-
81	Wells Fargo Restaurant Depository Account	4945761393	No	-
82	Wells Fargo Restaurant Depository Account	4943035311	No	-
83	Wells Fargo Restaurant Depository Account	4945761427	No	-
84	Wells Fargo Restaurant Depository Account	4940073307	No	-
85	Wells Fargo Restaurant Depository Account	4945761450	No	-
86	Wells Fargo Restaurant Depository Account	4945761468	No	-
87	Wells Fargo Restaurant Depository Account	4945761476	No	-
88	Wells Fargo Restaurant Depository Account	4945761492	No	-
89	Wells Fargo Restaurant Depository Account	4945761500	No	-
90	Wells Fargo Restaurant Depository Account	4945761518	No	-
91	Wells Fargo Restaurant Depository Account	4945761526	No	-
92	Wells Fargo Restaurant Depository Account	4945780484	No	-
93	Wells Fargo Restaurant Depository Account	4945761542	No	-
94	Wells Fargo Restaurant Depository Account	4945761559	No	-
95	Wells Fargo Restaurant Depository Account	4941050049	No	-
96	Wells Fargo Restaurant Depository Account	4945761583	No	-
97	Wells Fargo Restaurant Depository Account	4945763431	No	-
98	Wells Fargo Restaurant Depository Account	4945761633	No	-
99	Wells Fargo Restaurant Depository Account	4945761641	No	-
100	Wells Fargo Restaurant Depository Account	4940709355	No	-
101	Wells Fargo Restaurant Depository Account	4945761658	No	-
102	Wells Fargo Restaurant Depository Account	4945761674	No	-
103	Wells Fargo Restaurant Depository Account	4945761682	No	-
104	Wells Fargo Restaurant Depository Account	4943035329	No	-
105	Wells Fargo Restaurant Depository Account	4945761690	No	-
106	Wells Fargo Restaurant Depository Account	4945761708	No	-
107	Wells Fargo Restaurant Depository Account	4941104655	No	-
108	Wells Fargo Restaurant Depository Account	4945985059	No	-
109	Wells Fargo Restaurant Depository Account	4945761716	No	-
110	Wells Fargo Restaurant Depository Account	4945985083	No	-
111	Wells Fargo Restaurant Depository Account	4942711292	No	-
112	Wells Fargo Restaurant Depository Account	4945761724	No	-

113	Wells Fargo Restaurant Depository Account	4945761732	No	-
114	Wells Fargo Restaurant Depository Account	4945761740	No	-
115	Wells Fargo Restaurant Depository Account	4940793060	No	-
116	Wells Fargo Restaurant Depository Account	4945761765	No	-
117	Wells Fargo Restaurant Depository Account	4943215053	No	-
118	Wells Fargo Restaurant Depository Account	4945761773	No	-
119	Wells Fargo Restaurant Depository Account	4945761781	No	-
120	Wells Fargo Restaurant Depository Account	4941164998	No	-
121	Wells Fargo Restaurant Depository Account	4945761799	No	-
122	Wells Fargo Restaurant Depository Account	4945761807	No	-
123	Wells Fargo Restaurant Depository Account	4945761815	No	-
124	Wells Fargo Restaurant Depository Account	4945761823	No	-
125	Wells Fargo Restaurant Depository Account	4942975582	No	-
126	Wells Fargo Restaurant Depository Account	4942975590	No	-
127	Wells Fargo Restaurant Depository Account	4945761849	No	-
128	Wells Fargo Restaurant Depository Account	4945761856	No	-
129	Wells Fargo Restaurant Depository Account	4945761864	No	-
130	Wells Fargo Restaurant Depository Account	4945761872	No	-
131	Wells Fargo Restaurant Depository Account	4945761880	No	-
132	Wells Fargo Restaurant Depository Account	4945761906	No	-
133	Wells Fargo Restaurant Depository Account	4945761914	No	-
134	Wells Fargo Restaurant Depository Account	4945761930	No	-
135	Wells Fargo Restaurant Depository Account	4945761948	No	-
136	Wells Fargo Restaurant Depository Account	4128775202	No	-
137	Wells Fargo Restaurant Depository Account	4983368416	No	-
138	Wells Fargo Restaurant Depository Account	4945761989	No	-
139	Wells Fargo Restaurant Depository Account	4945761997	No	-
140	Wells Fargo Restaurant Depository Account	4942982067	No	-
141	Wells Fargo Restaurant Depository Account	4945761369	No	-
142	Wells Fargo Restaurant Depository Account	4942141243	No	-
143	Wells Fargo Restaurant Depository Account	4945761401	No	-
144	Wells Fargo Restaurant Depository Account	4943035337	No	-
145	Wells Fargo Restaurant Depository Account	4943035279	No	-
146	Wells Fargo Restaurant Depository Account	4940289432	No	-
147	Regions Bank Restaurant Depository Account	7880068187	No	-
148	Regions Bank Restaurant Depository Account	7880067903	No	-
149	Regions Bank Restaurant Depository Account	7880067717	No	-
150	Regions Bank Restaurant Depository Account	7880046728	No	-
151	Regions Bank Restaurant Depository Account	7880046647	No	-
152	Regions Bank Restaurant Depository Account	7880025194	No	-
153	Regions Bank Restaurant Depository Account	7880003352	No	-
154	Regions Bank Restaurant Depository Account	7880003271	No	-
155	Regions Bank Restaurant Depository Account	7880003247	No	-
156	Regions Bank Restaurant Depository Account	7880003204	No	-
157	Regions Bank Restaurant Depository Account	7880003182	No	-
158	Regions Bank Restaurant Depository Account	7880003158	No	-
159	Regions Bank Restaurant Depository Account	7880003131	No	-
160	Regions Bank Restaurant Depository Account	196819065	No	-
161	Regions Bank Restaurant Depository Account	161876216	No	-
162	Regions Bank Restaurant Depository Account	161876119	No	-
163	Regions Bank Restaurant Depository Account	161876100	No	-
164	Regions Bank Restaurant Depository Account	161876097	No	-
165	Regions Bank Restaurant Depository Account	161876070	No	-
166	Regions Bank Restaurant Depository Account	161876038	No	-
167	Regions Bank Restaurant Depository Account	161876011	No	-
168	Regions Bank Restaurant Depository Account	161875996	No	-
169	Regions Bank Restaurant Depository Account	161875953	No	-

170	Regions Bank Restaurant Depository Account	161875937	No	-
171	Regions Bank Restaurant Depository Account	161875929	No	-
172	Regions Bank Restaurant Depository Account	161875910	No	-
173	Regions Bank Restaurant Depository Account	161875902	No	-
174	Regions Bank Restaurant Depository Account	161875899	No	-
175	Regions Bank Restaurant Depository Account	161875880	No	-
176	Regions Bank Restaurant Depository Account	161875856	No	-
177	Regions Bank Restaurant Depository Account	161875848	No	-
178	Regions Bank Restaurant Depository Account	161875821	No	-
179	Regions Bank Restaurant Depository Account	101860178	No	-
180	Regions Bank Restaurant Depository Account	101859005	No	-
181	Regions Bank Restaurant Depository Account	94865574	No	-
182	Regions Bank Restaurant Depository Account	92364748	No	-
183	Regions Bank Restaurant Depository Account	92364713	No	-
184	Regions Bank Restaurant Depository Account	92364594	No	-
185	Regions Bank Restaurant Depository Account	92364586	No	-
186	Regions Bank Restaurant Depository Account	92364578	No	-
187	Regions Bank Restaurant Depository Account	92364543	No	-
188	Regions Bank Restaurant Depository Account	92364535	No	-
189	Regions Bank Restaurant Depository Account	92364527	No	-
190	Regions Bank Restaurant Depository Account	92364519	No	-
191	Regions Bank Restaurant Depository Account	92364500	No	-
192	Regions Bank Restaurant Depository Account	92364497	No	-
193	Regions Bank Restaurant Depository Account	92364489	No	-
194	Regions Bank Restaurant Depository Account	92364462	No	-
195	Regions Bank Restaurant Depository Account	74544705	No	-
196	Regions Bank Restaurant Depository Account	54206413	No	-
197	Regions Bank Restaurant Depository Account	54206405	No	-
198	Regions Bank Restaurant Depository Account	54206383	No	-
199	Regions Bank Restaurant Depository Account	54206359	No	-
200	Regions Bank Restaurant Depository Account	53596838	No	-
201	Regions Bank Restaurant Depository Account	53596439	No	-
202	Regions Bank Restaurant Depository Account	53596404	No	-
Total Bank Account Balance				\$ 3,578,980

*DACA executed within 90 days prior to Petition Date.



Assets - Real and Personal Property

Schedule 2

Part 10, Question 60: Patents, copyrights, trademarks, and trade secrets



Trademark Name	Country Name	Trademark Status	File Date	App. Number	Reg. Date	Reg. Number	Next Renewal Date	Class	Goods
CHIK	U.S.	Registered	02/07/2012	85536255	09/11/2012	4205762	09/11/2022	30	Specially prepared sandwiches
CHILI CHEESE PUP	U.S.	Registered	02/07/2012	85536153	10/02/2012	4217196	10/02/2022	30	Frankfurter sandwiches containing chili and cheese, for consumption on or off the premises
CORN PUP	U.S.	Registered	02/07/2012	85536127	09/11/2012	4205755	09/11/2022	30	Miniature frankfurters, encased in a bread crust on a stick
HASH BROWN KRYSPERS	U.S.	Registered	10/05/1998	75563773	08/20/2002	2610061	08/20/2022	29	Hash brown potatoes for consumption on or off the premises
KRYSTAL	U.S.	Registered	06/29/1998	75510205	09/28/1999	2281199	09/28/2029	41	Education services, namely, conducting classes, conferences and workshops in the field of restaurant management and operations, and distributing course material in conjunction therewith, entertainment services in the nature of athletic competitions
KRYSTAL	U.S.	Registered	09/05/1997	75352556	10/05/1999	2282541	10/05/2029	09	Computer software for use in restaurant management applications, namely, transferring data from point of sale devices, for inventory and time and attendance management, for data base management, and for supporting restaurant operations
KRYSTAL	U.S.	Registered	07/16/1984	73490050	04/09/1985	1330234	04/09/2025	42	Restaurant Services
KRYSTAL	U.S.	Registered	12/07/1992	74337580	08/10/1993	1787005	08/10/2023	35	Franchising services, namely, offering technical assistance, business consulting, data processing, and training in the establishment and operation of restaurants
KRYSTAL	U.S.	Registered	04/25/1994	74516549	01/28/1997	2033261	01/28/2027	25	Clothing, namely, T-shirts, golf shirts, polo shirts, hats, visors, shorts, sweaters, sweatshirts, sweatpants, jackets, wind breakers, and aprons
KRYSTAL	U.S.	Registered	04/25/1994	74516536	12/26/1995	1943491	12/26/2025	21	Drinking glasses and bowls, not of leaded glass, coffee cups, mugs, paper cups, plastic cups, thermal insulated containers for beverages, squeeze bottles, ice chests and ice buckets distributed through 'Krystal and Krystal Kwik' restaurants
KRYSTAL	U.S.	Registered	01/31/1994	74484271	01/31/1995	1876821	01/31/2025	32	Light beverages, namely soft drinks, fruit juices, vegetable juices and aerated fruit juices

Part 10, Question 60: Patents, copyrights, trademarks, and trade secrets






Trademark Name	Country Name	Trademark Status	File Date	App. Number	Reg. Date	Reg. Number	Next Renewal Date	Class	Goods
KRYSTAL	U.S.	Registered	01/31/1994	74484253	12/16/1997	2120676	12/16/2027	28	Toys, namely toy balloons, plastic toy animals, plush toys, toy vehicles, inflatable bath toys, and inflatable play toys
	U.S.	Registered	07/23/1984	73491387	04/09/1985	1330251	04/09/2025	42	Restaurant Services
	U.S.	Registered	07/23/1984	73491385	04/16/1985	1331146	04/16/2025	30	Various Fast Food Items-Namely, Hamburger and Cheeseburger Sandwiches for Consumption On or Off the Premises
	U.S.	Registered	10/04/2018	88142904	05/21/2019	5756748	05/21/2025	25, 29, 30, 32, 43	<p>25: Clothing, namely, T-shirts, golf shirts, polo shirts, vests, hats, visors, head bands, shorts, sweaters, sweatshirts, sweatpants, jackets, wind breakers, and aprons</p> <p>29: Specially prepared entree consisting primarily of eggs, meat and cheese, and also containing grits, for consumption on or off the premises; French fries; Corn dogs; Prepared chicken wings, sold through applicant's restaurants</p> <p>30: Cheeseburger sandwiches; Hamburger sandwiches; Hot dog sandwiches; Specially prepared sandwiches; Specially prepared sandwiches served on a square bun; Various Fast Food Items-Namely, Hamburger and Cheeseburger Sandwiches for Consumption On or Off the Premises; Coffee and tea</p> <p>32: Light beverages, namely, soft drinks, fruit juices, vegetable juices and aerated fruit juices</p> <p>43: Fast-food restaurant services; Restaurant services; Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises, Food and drink catering</p>

Assets - Real and Personal Property

Part 10, Question 60: Patents, copyrights, trademarks, and trade secrets

Trademark Name	Country Name	Trademark Status	File Date	App. Number	Reg. Date	Reg. Number	Next Renewal Date	Class	Goods
	U.S.	Registered	10/04/2018	88142894	07/23/2019	5810997	07/23/2025	25, 29, 30, 32, 43	<p>25: Clothing, namely, T-shirts, golf shirts, polo shirts, vests, hats, visors, head bands, shorts, sweaters, sweatshirts, sweatpants, jackets, wind breakers, and aprons</p> <p>29: Specially prepared entree consisting primarily of eggs, meat and cheese, and also containing grits, for consumption on or off the premises; French fries; Corn dogs; Prepared chicken wings, sold through restaurants</p> <p>30: Cheeseburger sandwiches; Hamburger sandwiches; Hot dog sandwiches; Specially prepared sandwiches; Specially prepared sandwiches served on a square bun; Various Fast Food Items- Namely, Hamburger and Cheeseburger Sandwiches for Consumption On or Off the Premises; Coffee and tea</p> <p>32: Light beverages, namely, soft drinks, fruit juices, vegetable juices and aerated fruit juices</p> <p>43: Fast-food restaurant services; Restaurant services; Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises; Food and drink catering</p>
KRYSTAL BREAKFAST SCRAMBLER	U.S.	Registered	06/04/2003	78266532	05/22/2007	3243487	05/22/2027	29	Specially prepared entree consisting primarily of eggs, meat and cheese, and also containing grits, for consumption on or off the premises
	U.S.	Registered	07/02/2010	85077131	05/31/2011	3971926	05/31/2021	29	Prepared chicken wings, sold through applicant's restaurants

Part 10, Question 60: Patents, copyrights, trademarks, and trade secrets

Trademark Name	Country Name	Trademark Status	File Date	App. Number	Reg. Date	Reg. Number	Next Renewal Date	Class	Goods
	U.S.	Registered	10/09/2014	86419132	08/30/2016	5032462	08/30/2022	35	Administration of a customer loyalty program which provides incentive awards to customers through a loyalty card program for the purpose of promoting and rewarding loyalty
	U.S.	Registered	10/09/2014	86419147	05/26/2015	4743522	05/26/2021	30, 43	30: Cheeseburger sandwiches; Hamburger sandwiches 43: Fast-food restaurant services; Restaurant services; Restaurant services, including sit-down service of food and take-out restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises
KRYSTAL JUNKYARD FRIES	U.S.	Registered	10/07/2016	87196450	05/09/2017	5199848	05/09/2023	29	French fries
KRYSTAL LOVERS	U.S.	Registered	08/11/2005	78690927	01/09/2007	3197634	01/09/2027	43	Restaurant services
KRYSTAL SUNRISER	U.S.	Registered	10/13/1995	75005549	11/05/1996	2013581	11/05/2026	30	Specially prepared sandwiches served on a square bun
LITTLE FOOD, BIG TASTE	U.S.	Registered	07/17/2001	76286901	12/31/2002	2670133	01/03/2023	42	Restaurant services
SHUN THE HO-HUM	U.S.	Registered	03/08/2016	86932967	09/13/2016	5041170	09/13/2022	43	Restaurant services; Restaurant services, namely, providing of food and beverages for consumption on and off the premises; Fast-food restaurant services; Fast-food restaurant services, Take-out restaurant services
TAKE ALONG A SACKFUL	U.S.	Registered	05/20/1999	75710783	07/03/2007	3257380	07/03/2027	43	Restaurant services
	U.S.	Registered	06/27/2014	86322773	03/15/2016	4916524	03/15/2022	32	Soft drink beverages sold in quick serve restaurants for consumption on or off the premises
	U.S.	Registered	10/04/2018	88142899	12/31/2019	5951212	12/31/2025	35, 39	35: On-line ordering services in the field of restaurant take-out and delivery 39 Delivery of food by restaurants
	U.S.	Registered	10/04/2018	88142907	12/31/2019	5951213	12/31/2025	35, 39	35 On-line ordering services in the field of restaurant take-out and delivery 39 Delivery of food by restaurants